

Record

6 July 1984

MEMORANDUM FOR THE RECORD


SUBJECT: Hearing on H.R. 2300: Civil Service Spouse
Retirement Equity Act

1. On 20 June I attended a House Committee on Post Office and Civil Service hearing regarding previously introduced former spouse legislation affecting the Civil Service at large (Civil Service Spouse Retirement Equity Act--H.R. 2300). This Bill would incorporate former spouse provisions into the Civil Service Retirement System (CSRS) similar to those already contained in the CIA Retirement and Disability System, i.e., the basic purpose is to provide a qualified former spouse of a Federal employee with a portion of the employee's CSRS annuity.

2. The Office of Personnel Management went on record as opposing this Bill and as a result it was redrafted to provide only survivor benefits to former spouses. It will now go back to the Committee Staff for ironing out some of the technical provisions brought up in the hearing. It is not certain that the Bill will be enacted during this session of Congress. This Bill should not be confused with Congressmen Mazzoli and Whitehurst's bill which will give CIARDS spouses divorced before 1978 the same benefits as those included in the legislation providing benefits to spouses of CIARDS annuitants who were divorced after 1978.

3. The witness list and their testimony is attached.

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U.S. House of Representatives

COMMITTEE ON POST OFFICE AND CIVIL SERVICE
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS
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SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

HEARING ON REVISIONS TO H.R. 2300

WEDNESDAY, JUNE 20, 1984

LIST OF WITNESSES

- ✓ 1. The Honorable Patricia Schroeder (D-CO)
Member of Congress
- ✓ 2. Mr. James Morrison, Jr.
Associate Director, Compensation Group
Office of Personnel Management
3. Panel: ✓ Mrs. Edith U. Fierst
Attorney at Law
✓ Mr. John Sheffey
Executive Vice President
National Association for Uniformed Services
4. Panel: Ms. Karen Friedman
Education Director
Pension Rights Center
Ms. Rosemary T. Mullany
President
Civil Service Spouses for Equity

OPENING STATEMENT
CONGRESSWOMAN MARY ROSE OAKAR
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS
HEARING ON REVISIONS TO H.R. 2300
WEDNESDAY, JUNE 20, 1984

THE SUBCOMMITTEE WILL COME TO ORDER.

TODAY, THE SUBCOMMITTEE WILL RECEIVE TESTIMONY ON REVISIONS TO H.R. 2300, "THE CIVIL SERVICE SPOUSE RETIREMENT EQUITY ACT." THE BILL, INTRODUCED BY CONGRESSWOMAN PATRICIA SCHROEDER, CHAIRWOMAN OF THE CIVIL SERVICE SUBCOMMITTEE, WAS THE SUBJECT OF AN EARLIER HEARING CONDUCTED BY THIS SUBCOMMITTEE ON OCTOBER 20, 1983.

DURING THE OCTOBER HEARING, THE SUBCOMMITTEE FOCUSED IN ON SEVERAL KEY ISSUES SURROUNDING THE QUESTION OF DIVORCED SPOUSE RETIREMENT BENEFITS. FIRST, OLDER WOMEN ARE THE FASTEST GROWING POVERTY GROUP IN AMERICA. THE NUMBER OF WOMEN AGE 65 AND OLDER IS DOUBLE THE NUMBER OF MEN IN THE SAME GROUP. SEVENTY-TWO PERCENT OF THE ELDERLY POOR IN THIS COUNTRY ARE WIDOWED, DIVORCED, OR SINGLE WOMEN. THE MEDIAN INCOME FOR THESE WOMEN IS LITTLE MORE THAN \$3,000 ANNUALLY FOR THOSE OVER 65 AND APPROXIMATELY \$4,500 ANNUALLY FOR THOSE BETWEEN THE AGES OF 55 AND 65.

SECOND, WOMEN IN THESE AGE GROUPS FIND IT EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ENTER THE LABOR FORCE AFTER A DIVORCE. AND, ONLY A FRACTION OF THE WOMEN WHO ARE DIVORCED

RECEIVE ALIMONY PAYMENTS.

THIRD, BECAUSE OF THE SURGING DIVORCE RATE, RETIREMENT LAWS NEED TO BE AMENDED TO PROVIDE NEEDED ECONOMIC SECURITY FOR WOMEN. THE SOCIAL SECURITY ACT, THE FOREIGN SERVICE ACT, AND CIA SPOUSE ACT HAVE ALL MADE MODIFICATIONS FOR DIVORCED SPOUSES. MOST RECENTLY, THE HOUSE UNANIMOUSLY PASSED H.R. 4280, "THE PRIVATE PENSION EQUITY ACT OF 1984," WHICH WOULD AMEND ERISA TO PROVIDE MORE ADEQUATE PENSION COVERAGE TO FEMALE WORKERS AND SPOUSES OF WORKERS.

THE CIVIL SERVICE RETIREMENT SYSTEM IS ONE PROGRAM WHICH HAS NOT BEEN AMENDED TO MEET THE NEEDS OF DIVORCED SPOUSES. THE REVISIONS WHICH WILL BE DISCUSSED TODAY, REFLECT A SEGMENT OF THE POPULATION OFTEN IGNORED, THE DIVORCED SURVIVOR. CONGRESSWOMAN SCHROEDER'S AMENDED BILL WOULD ENTITLE FORMER SPOUSES TO CIVIL SERVICE SURVIVOR BENEFITS ACCORDING TO THE TERMS OF COURT ORDERS. BOTH THE CIVIL SERVICE EMPLOYEE AND HIS OR HER SPOUSE WOULD, UNDER THE PROVISIONS OF THE BILL, HAVE TO SIGN A WAIVER TO EXEMPT THE SPOUSE FROM RECEIVING A SURVIVOR BENEFIT. IN ADDITION, SURVIVING FORMER SPOUSES WOULD BE ENTITLED TO THE SAME COST-OF-LIVING ADJUSTMENTS AVAILABLE TO OTHER CIVIL SERVICE RETIREES.

THESE REVISIONS TO THE CIVIL SERVICE RETIREMENT SYSTEM ARE ESSENTIAL IN PROTECTING SPOUSES OF CIVIL SERVICE EMPLOYEES ADEQUATELY. I REALIZE THAT WORK NEEDS TO BE DONE ON THE BILL TO BRING IT IN LINE WITH OTHER LAWS. THIS SUBCOMMITTEE WILL WORK EXPEDITIOUSLY ON THAT LANGUAGE AND WITH THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE TOWARD PASSAGE OF THIS ACT.

I WOULD LIKE TO THANK ALL THE WITNESSES FOR COMING. I AM PLEASED THAT THE ORIGINAL SPONSOR OF THE BILL, CONGRESSWOMAN SCHROEDER, IS HERE TODAY ALSO.

BEFORE THE SUBCOMMITTEE HEARS FROM CONGRESSWOMAN SCHROEDER, I WOULD LIKE TO MENTION THAT FEDERAL EMPLOYEE, RETIREE, AND POSTAL ORGANIZATIONS WILL BE SUBMITTING WRITTEN STATEMENTS FOR THE RECORD. UNFORTUNATELY, PENDING NEGOTIATIONS WITHIN THE POSTAL SERVICE, AS WELL AS THE LEGISLATIVE CALENDAR HAVE PREVENTED THE GROUPS FROM APPEARING.

AGAIN, THANK YOU ALL FOR COMING.

Statement of Rep. Patricia Schroeder
Before the Subcommittee on Compensation and Employee Benefits
On H.R. 2300 as Re-drafted
June 20, 1984

Chairwoman Oakar and Members of the Subcommittee:

I appreciate the opportunity to testify before you on this re-draft of H.R. 2300, the Civil Service Spouse Retirement Equity Act. In the eight months that have passed since this Subcommittee last heard testimony on the bill, the issue of providing fair treatment to divorced spouses of Civil Service employees has not disappeared. In fact, recent House action has removed any doubt that equitable treatment of pension benefits in divorce has the congressional stamp of approval. There is no longer any excuse for us to delay action on H.R. 2300.

Last month the House passed legislation to insure that private sector pension benefits can be provided to divorced spouses. The provisions for survivor annuities for widows and surviving former spouses were also strengthened. The Retirement Equity Act for the private sector passed unanimously.

It's now time to turn our full attention to the last remaining group of spouses who are by law prevented from receiving survivor benefits if the marriage ends in divorce -- Civil Service former spouses.

The record of this Subcommittee's last hearing on H.R. 2300 establishes the urgent need for this legislation. At that hearing, we heard the stories of older women divorced late in life, unskilled in marketable trades, and unable to earn a living wage or their own retirement credits.

The financial difficulties of these divorced Civil Service spouses become even more extreme following the death of the retiree. While the retiree was living, some spouses were receiving alimony or a portion of the retiree's pension under P.L. 95-366. But this income ends when the retiree dies. Since most Civil Service spouses have no Social Security coverage, all income stops at the moment of the retiree's death.

We in Congress have repeatedly determined that it's bad public policy to force homemaking spouses into penury following divorce and the death of the wage earner. The precedents for passage of H.R. 2300 are clear. In 1965, the Social Security Act was amended to provide benefits to divorced spouses married 20 years or more. The marriage requirement was reduced to 10 years in 1977.

Public Law 95-366 was enacted in 1978 to permit direct payment of retirement - but not survivor - benefits to an ex-spouse in accordance with the terms of a court order or property settlement.

In 1980, Public Law 96-465 was enacted to permit divorced spouses of Foreign Service personnel to receive a pro rata share of retirement and survivor benefits. Those same benefits were extended to former spouses of CIA personnel in 1982.

The Uniformed Services Former Spouse's Protection Act allows a divorced military spouse to receive survivor benefits if so designated. And now, the nation's private sector will be covered under the Retirement Equity Act. There is simply no reason why former spouses of Civil Service employees should be singled out as

ineligible for survivor benefits.

I think it's important for us to examine the policy which underlies the Civil Service survivor annuity. Many years ago the government recognized its obligation to the spouse and dependents of its employees. The annuity was created so that the spouse and dependants of a Civil Service retiree would not be left penniless after the retiree's death. Implicit in the survivor annuity provision is the assumption that the spouse will be a homemaker; not likely to have worked outside the home after marriage and therefore without retirement credits in her own name.

These underlying assumptions are equally valid with respect to the Civil Service spouse whose marriage ends in divorce.

The modified version of H.R. 2300 before the Subcommittee today deals primarily with survivor benefits for divorced Civil Service spouses. Section 2 of the bill authorizes state courts to order that survivor benefits be paid to a divorced spouse of a Civil Service retiree upon the retiree's death. The Office of Personnel Management would be required to pay such survivor benefits according to the terms of the court order. This section would apply only to those persons who become divorced after the bill becomes law.

The re-draft contains no length of marriage requirement; nor is there set out any formula to assist state courts in the equitable division of the survivor benefits. I believe the pro rata formula set out in the original version of H.R. 2300 is much fairer, and certainly far simpler to administer. However, the consensus seems to be that the Civil Service should follow the

private sector rather than the Foreign Service system for handling pensions and divorce.

Section 3 of the modified bill retains the joint employee-spouse election of H.R. 2300. Under this section, survivor benefits are mandatory unless the retiree's spouse agrees in writing to a waiver of the survivor annuity. If the retiree has a former spouse for whom a court has ordered that survivor benefits be paid, the retiree must obtain the former spouse's consent to any waiver. This joint election parallels the Retirement Equity Act, which requires participants in private sector pensions to choose survivor benefits unless both spouses agree to waive the benefits.

Section 4 of the bill deals with survivor benefits in the case of divorces prior to the measure's effective date. It would allow a Civil Service retiree to assign survivor benefits to a spouse from whom he or she is already divorced. Also, if a court order has already been issued which orders that survivor benefits be paid to a divorced spouse, OPM would be required to honor that court order.

Finally, this bill would allow an already divorced Civil Service spouse to petition a state court for an award of survivor benefits. It's important to remember that only in the past five years have pensions and survivor benefits become essential considerations in domestic relations law. Most, if not all, of those already divorced could not have asked for survivor benefits at the time of divorce. The state courts, and indeed the federal government, did not consider the benefits divisible.

We have made progress over the last decade and those now getting divorces are fully aware of the availability and necessity of dealing with pension benefits. Those previously divorced are not so fortunate. Many are living in poverty. Some are on welfare. It is women like these which cause older women to be the fastest growing poverty group in society. We have an opportunity to do something for these women in this bill. We have an opportunity to permit them to go back to the court from which they got a divorce and ask for a modification of the divorce decree to make them eligible for a survivor's benefit. I believe we should do so. I am not prepared to sentence these women to poverty for the rest of their lives.

I commend Chairwoman Oakar for moving this legislation. Women have waited far too long for this legislation to be enacted. Further delay would be inexcusable.

STATEMENT OF
JAMES W. MORRISON, JR.
ASSOCIATE DIRECTOR FOR COMPENSATION
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON COMPENSATION AND
EMPLOYEE BENEFITS
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
U.S. HOUSE OF REPRESENTATIVES

at a hearing on

REVISION OF H.R. 2300
THE "CIVIL SERVICE SPOUSE RETIREMENT EQUITY ACT"

JUNE 20, 1984

MADAM CHAIR AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THE OPPORTUNITY TO APPEAR THIS MORNING TO DISCUSS A PROPOSED REVISION OF H.R. 2300, THE "CIVIL SERVICE SPOUSE RETIREMENT EQUITY ACT."

THE OFFICE OF PERSONNEL MANAGEMENT BELIEVES THE REVISED DRAFT BILL REPRESENTS A SUBSTANTIAL IMPROVEMENT OVER THE EARLIER VERSION. IN FACT, THE PROPOSED REVISION IS VERY SIMILAR IN SUBSTANCE TO OUR OWN DRAFT "CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT," WHICH WAS SUBMITTED TO CONGRESS ON JUNE 11.

THE REVISED DRAFT OF H.R. 2300, LIKE OUR PROPOSAL, WOULD CONTINUE THE PRINCIPLE IN THE CURRENT CIVIL SERVICE RETIREMENT LAW THAT FORMER SPOUSES' ANNUITY RIGHTS SHOULD BE LEFT TO THE STATE COURTS TO DETERMINE, ALONG WITH THE DIVISION OF OTHER MARITAL PROPERTY, AND WOULD EXTEND THIS PRINCIPLE TO CIVIL SERVICE SURVIVOR ANNUITIES IN THE SAME WAY IT ALREADY APPLIES TO THE APPORTIONMENT OF FEDERAL EMPLOYEES' ANNUITIES. THE ACCEPTANCE OF THIS PRINCIPLE OF THE ROLE OF THE STATE COURTS REMOVES ONE OF THE MAJOR GROUNDS

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FOR OUR OPPOSITION TO H.R. 2300, AS I EXPLAINED IN MY TESTIMONY BEFORE THE SUBCOMMITTEE LAST OCTOBER.

THE REVISED BILL WOULD REQUIRE THE OFFICE OF PERSONNEL MANAGEMENT TO PAY SURVIVOR ANNUITIES TO FORMER SPOUSES TO THE EXTENT SPECIFIED IN COURT ORDERS PURSUANT TO DIVORCE OR ANNULMENT. NO SURVIVOR ANNUITY COULD EXCEED 55 PERCENT OF THE EMPLOYEE'S ANNUITY. IF A FORMER SPOUSE WERE AWARDED LESS THAN 55 PERCENT OF THE EMPLOYEE'S ANNUITY, THE REMAINDER WOULD BE AVAILABLE TO ANY SUBSEQUENT FORMER SPOUSE OR SURVIVING SPOUSE OF THE EMPLOYEE. A FORMER SPOUSE'S RIGHT TO A SURVIVOR ANNUITY WOULD TERMINATE IF HE OR SHE REMARRIED BEFORE AGE 60.

THE EMPLOYEE'S ANNUITY WOULD BE REDUCED TO PROVIDE A SURVIVOR ANNUITY FOR A FORMER SPOUSE. THIS REDUCTION WOULD BE ELIMINATED IF THE FORMER SPOUSE REMARRIED BEFORE AGE 60 OR DIED, UNLESS THE RETIREE ELECTED TO CONTINUE THE REDUCTION IN ORDER TO PROVIDE A HIGHER SURVIVOR ANNUITY FOR HIS OR HER CURRENT SPOUSE.

AN EMPLOYEE PROVIDING A SURVIVOR ANNUITY FOR A FORMER SPOUSE COULD ELECT TO PROVIDE AN ADDITIONAL SURVIVOR ANNUITY FOR A SUBSEQUENT SPOUSE, IF THE EMPLOYEE PASSED A PHYSICAL EXAMINATION. THE EMPLOYEE'S ANNUITY WOULD BE ACTUARIALLY REDUCED TO PROVIDE THIS ADDITIONAL SURVIVOR ANNUITY, UNLESS THE EMPLOYEE HAD ELECTED TO FINANCE THE ANNUITY THROUGH SOME OTHER METHOD, SUCH AS A SALARY ALLOTMENT.

IN ADDITION, THE REVISED BILL WOULD PREVENT A MARRIED EMPLOYEE FROM WAIVING A SURVIVOR ANNUITY AT THE TIME OF RETIREMENT WITHOUT THE WRITTEN AND NOTARIZED APPROVAL OF HIS OR HER CURRENT SPOUSE. UNDER PRESENT LAW,

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THE EMPLOYEE'S SPOUSE MUST BE INFORMED OF THE EMPLOYEE'S DECISION NOT TO PROVIDE A SURVIVOR ANNUITY, BUT THE SPOUSE DOES NOT HAVE THE RIGHT TO BLOCK THE EMPLOYEE'S DECISION.

✓ WHILE, IN SUBSTANCE, WE SUPPORT THESE ASPECTS OF THE REVISED BILL, IT HAS CERTAIN PROVISIONS THAT WE OPPOSE. THE REVISED BILL WOULD REQUIRE OPM TO INFORM EMPLOYEES, SPOUSES OF EMPLOYEES, AND FORMER SPOUSES OF EMPLOYEES EACH YEAR OF THEIR RIGHTS UNDER THE BILL'S PROVISIONS. WE ARE STRONGLY OPPOSED TO THIS PROVISION, SINCE WE DO NOT THINK IT WOULD BE FEASIBLE FOR US TO LOCATE AND NOTIFY PERSONS WHO ARE NOT FEDERAL EMPLOYEES, AND WHOM WE GENERALLY DO NOT EVEN KNOW EXIST. UNDER OUR DECENTRALIZED RETIREMENT RECORD-KEEPING, THE RECORDS OF AN EMPLOYEE'S PARTICIPATION IN THE RETIREMENT SYSTEM ARE NOT SUBMITTED TO US UNTIL HE OR SHE SEPARATES FROM THE EMPLOYING AGENCY. OBVIOUSLY, THERE IS NO WAY WE COULD IDENTIFY OR CONTACT SPOUSES OR FORMER SPOUSES OF SUCH EMPLOYEES.

✓ WE ALSO ARE OPPOSED THE BILL'S RETROACTIVE PROVISIONS. GENERALLY, THE BILL'S PROVISIONS WOULD TAKE EFFECT 120 DAYS AFTER ENACTMENT AND WOULD APPLY IN CASES OF DIVORCES OCCURRING ON OR AFTER THAT DATE. HOWEVER, UNDER SECTION 4, FORMER SPOUSES OF EMPLOYEES AND RETIREES ALREADY DIVORCED BEFORE THE EFFECTIVE DATE WOULD BECOME ENTITLED TO SURVIVOR ANNUITIES TO THE EXTENT PROVIDED BY COURT ORDER OR SPOUSAL AGREEMENT. IN THESE CASES, WE WOULD HAVE TO RECOGNIZE NOT ONLY COURT ORDERS ALREADY ISSUED BEFORE THE EFFECTIVE DATE, BUT ANY AMENDED ORDERS ISSUED AFTER THE EFFECTIVE DATE. MOREOVER, A SURVIVOR ANNUITY WOULD AUTOMATICALLY BE PAYABLE TO THE FORMER SPOUSE OF A RETIREE WHO DIED BEFORE THE EFFECTIVE DATE, IF THE RETIREE WAS MARRIED TO THE FORMER SPOUSE AT THE TIME

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OF RETIREMENT AND DID NOT WAIVE A SURVIVOR ANNUITY, AND IF, AFTER THE COUPLE'S DIVORCE, THE RETIREE DID NOT ACQUIRE ANOTHER SPOUSE WHO IS ENTITLED TO A CIVIL SERVICE SURVIVOR ANNUITY.

WE OPPOSE THESE RETROACTIVE PROVISIONS. GENERALLY, WHEN THE CIVIL SERVICE RETIREMENT LAW HAS BEEN AMENDED TO PROVIDE NEW BENEFITS, THOSE CHANGES HAVE APPLIED ONLY TO INDIVIDUALS WHO RETIRED OR OTHERWISE MET THE QUALIFICATIONS FOR THE BENEFITS ON OR AFTER THE EFFECTIVE DATE. DEVIATION FROM THIS LONG PRACTICE IN THE CASE OF H.R. 2300 WOULD NOT ONLY CREATE SIGNIFICANT ADMINISTRATIVE PROBLEMS BUT WOULD ALSO BE UNDESIRABLE IN VIEW OF THE SIGNIFICANT COST OF PROVIDING THESE BENEFITS. THE REDUCTION IN AN EMPLOYEE'S ANNUITY FROM THE DATE OF HIS OR HER RETIREMENT UNTIL DEATH PAYS ONLY ABOUT ONE-THIRD OF THE COST OF THE SURVIVOR ANNUITY. UNDER H.R. 2300, IN CASES WHERE THE EMPLOYEE HAS BEEN RETIRED FOR SEVERAL YEARS, THE RETIREE'S ANNUITY WOULD BE REDUCED ONLY PROSPECTIVELY, SO THAT THE COST TO THE GOVERNMENT OF PROVIDING A SURVIVOR ANNUITY TO THE RETIREE'S FORMER SPOUSE WOULD BE CONSIDERABLY GREATER THAN IF THE RETIREE'S ANNUITY HAD BEEN REDUCED CONTINUOUSLY SINCE THE DATE OF RETIREMENT. IN CASES WHERE THE RETIREE DIED BEFORE THE BILL'S EFFECTIVE DATE, THE REDUCTION IN THE RETIREE'S ANNUITY TO PROVIDE A SURVIVOR BENEFIT WOULD HAVE BEEN ELIMINATED AT THE TIME OF DIVORCE. THUS, IN THESE CASES, TOO, PROVIDING THE SURVIVOR ANNUITY WOULD BE EVEN MORE EXPENSIVE THAN UNDER NORMAL CONDITIONS BECAUSE, FOR A SUBSTANTIAL PORTION OF THE EMPLOYEE'S RETIREMENT, HE OR SHE WOULD NOT HAVE BEEN DEFRAYING ANY PART OF THE COST OF THE SURVIVOR ANNUITY THROUGH A REDUCTION IN HIS OR HER RETIREMENT BENEFIT.

WHILE WE ARE GENERALLY PLEASED WITH THE SUBSTANCE OF THE PROPOSED REVISION OF H.R. 2300, WE WOULD LIKE TO ASK THE SUBCOMMITTEE TO FAVORABLY CONSIDER

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THE OFFICE OF PERSONNEL MANAGEMENT'S PROPOSED "CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT," SUBMITTED TO CONGRESS ON JUNE 11, 1984. THE REVISED H.R. 2300 IS VERY SIMILAR IN SUBSTANCE TO OUR PROPOSAL, BUT THE REVISED H.R. 2300 CONTAINS MANY TECHNICAL AND DRAFTING DEFICIENCIES WHICH OUR PROPOSAL AVOIDS. MOREOVER, OUR PROPOSAL HAS CERTAIN DESIRABLE FEATURES THAT H.R. 2300 LACKS. FOR EXAMPLE, AN EMPLOYEE WITH A FORMER SPOUSE ENTITLED TO A SURVIVOR ANNUITY WOULD BE PREVENTED, UNDER OUR PROPOSAL, FROM WITHDRAWING HIS OR HER RETIREMENT CONTRIBUTIONS AND THEREBY VOIDING ANY ANNUITY RIGHTS BASED ON THOSE CONTRIBUTIONS. SIMILARLY, AN EMPLOYEE'S CURRENT SPOUSE WOULD HAVE TO CONSENT TO THE EMPLOYEE'S APPLICATION FOR A REFUND OF RETIREMENT CONTRIBUTIONS BEFORE THE OFFICE OF PERSONNEL MANAGEMENT WOULD PAY THE REFUND. THIS WOULD PREVENT AN EMPLOYEE FROM VOIDING HIS OR HER ANNUITY RIGHTS IN ORDER TO CIRCUMVENT THE BILL'S OTHER PROVISIONS PROTECTING THE RIGHTS OF THE SPOUSE. WE VERY MUCH APPRECIATED THE CHAIR'S OFFER, DURING THE OCTOBER HEARING, TO WORK WITH US TO EFFECT THE SPOUSE EQUITY CHANGES THAT YOU, AS WELL AS OPM, BELIEVE SHOULD BE ENACTED, AND WE HOPE THAT THE TECHNICAL AND SUBSTANTIVE ADVANTAGES IN OUR PROPOSAL WILL LEAD YOU TO GIVE IT FAVORABLE CONSIDERATION.

THANK YOU FOR THIS OPPORTUNITY TO DISCUSS THESE PROPOSALS. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Testimony of Edith U. Fierst before the
Subcommittee on Compensation and Employee Benefits
Wednesday, June 20, 1984
on HR 2300, The Civil Service Spouse Equity Act of 1984

Thank you for giving me the opportunity to state my views on HR 2300, a bill to provide survivor annuities to former spouses of Federal employees. It is my intention to speak only briefly, and to focus on the reasons why I believe the bill is good for employees as well as their spouses from whom they are seeking or have obtained a divorce.

I am speaking from the perspective of my experience as a practising attorney who has handled several divorces. In this capacity I have had occasion to talk with several Federal employees who are divorcing. Sometimes there is great bitterness, but this is not always true. Sometimes the employee (and for purposes of this testimony I am assuming the employee is a man) has an admirable sense of responsibility to his wife or former wife. The couple may have been married many years. She may be the mother of his children. For reasons that do not detract from her character or good intentions, he may find her no longer compatible or exciting. Perhaps he wants to live alone, or perhaps he has found someone else whom he wants to marry instead. Perhaps he feels life is passing him by, and that if he is to get the most out of his remaining years, he must change wives.

Many of us may wish it were otherwise, but what I have described is a frequent reality of today, and one that society has come to accept.

The Government employee or retiree in this situation wants to get out of his unhappy marriage without leaving his wife destitute. On a government salary, however, [however], he cannot afford to purchase a survivor annuity in the private market. If he is a lifelong Federal employee and his wife has been a homemaker, she will have no Social Security. She will be one of the few Americans without any Government annuity in old age. In this circumstance, they may both feel financially trapped.

One of the principal assets he thought he had, a valuable indexed survivor annuity, is being taken away from him, even if he has been retired and paid for it for many years.

Indeed this is a terrible loss to him even if he is bitter toward his first wife. In that case a major asset he thought he had with which to pay for his former wife's future support is gone and he must sacrifice to pay what the court orders.

It is true that the survivor annuity is available to the second wife, but it often happens that she is younger and does not need the money. In many instances she is employed herself and has her own financial security. A case that had some publicity a few years ago, involving the then American Ambassador to Afghanistan who was assassinated three years after he had divorced his wife of roughly thirty years to marry a younger Foreign Service officer is the prototype of this case. The younger wife had no need for a survivor annuity the older wife had great need, but because at that time under the now changed

Foreign Service Act, divorce ended the possibility of providing a survivor annuity to the former spouse. All of the survivor annuity went to the second wife. This was hard not only on the former spouse, but also on the child of the Foreign Service officer who had no choice but to help support her mother. None of us wants this to happen to our children.

No matter whose perspective is assumed, the current law makes no sense. From the retiree's perspective it seems unfair that the survivor annuity for which he has paid is no longer available to him to dispose of as he wishes. Why should he lose the capacity to leave it to the very woman for whom it was purchased in the first instance?

From the Government's point of view, requiring him to designate his second wife may be very expensive. The first wife is likely to be near his age. The second wife on average will be younger, sometimes much younger. It makes no sense to require the taxpayers to pay for the second wife when it would be so much less expensive to pay for the first one.

From the perspective of the second wife who may have no need for it the survivor annuity may create a difficult dilemma. Indeed if she feels any guilt about breaking up the first marriage, being forced to take the first wife's financial security also may make her decision to marry the Federal employee harder, and she may decide not to do so.

If she is still willing and the employee decides to go ahead with the divorce, he may be compelled to give up his share in the family home to pay for her support after the divorce. Often it must be sold because she cannot afford to keep it up and he cannot pay the mortgage and also provide her with private insurance.

The whole situation is extremely unfair, and unnecessary. Why not allow the parties to dispose of the survivor annuity to whichever wife they want to get it? I have no doubt that both husband and wife in the usual situation would prefer this to the present situation in which the first wife loses all.

I understand that there is some concern about the possibility that this bill would permit survivor annuities to be paid in cases where divorce has already taken place and where there has already been a settlement. I would like to point out that there are two provisions protecting the employee and his subsequent spouse against any abuse of this possibility. The first is the provision that this can be done only by agreement of the parties or court order. Clearly the parties will not agree and the court will not order additional payment to the first wife when the separation agreement took care of her adequately under the circumstances. The second protection is the right of the second wife to bar payment to the first wife by withholding her consent. Why should the law offer more protection than that? Obviously the second wife will not agree if the circumstances are such that she is relying on the survivor annuity.

To summarize, I believe this bill is good for the employee as well as the former spouse, and that simple fairness requires that the first spouse not be denied the survivor annuity she needs for support in her old age. Those covered by Social Security have survivor protection even after divorce. Those

married to civil servants should have the same assurance. If not, some of the extra cost will have to be paid from welfare.

But this argument to the budget belittles us. For a great country like ours it should be enough that providing a survivor annuity is right. We do not need to save money by depriving widows of income.



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"The Serviceman's Voice in Government"

"Established 1968"

Statement of

John P. Sheffey

Executive Vice President

National Association for Uniformed Services

For the

Subcommittee on Compensation and Employee Benefits

Committee on Post Office and Civil Service

United States House of Representatives

On

Revised

H. R. 2300

June 20, 1984

Statement of
The National Association for Uniformed Services
For the
Subcommittee on Compensation and Employee Benefits
Committee on Post Office and Civil Service
United States House of Representatives

On

Revised

H R 2300

Presented by

John P. Sheffey, Executive Vice President

June 20, 1984

Madame Chairwoman and members of the Subcommittee, the National Association for Uniformed Services (NAUS), which represents a large number of former uniformed services personnel now working in or retired from federal civilian employment, appreciates this opportunity to testify on the revised version of H.R. 2300.

The revised bill eliminates many of the provisions of the original bill to which NAUS objected. It is now limited to the authorization of survivor annuities for divorced spouses of federal employees and annuitants, which is certainly acceptable in principle. However, Section 4 of the revised bill continues to contain language that would permit ex-post-facto court orders for survivor annuities. This is contrary to what the author of the Bill, Rep. Patricia Schroeder, has stated to

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me to be her intent; and it probably is unconstitutional. I quote from a letter from Mrs. Schroeder to me about the original H.R. 2300, dated October 25, 1983:

".....you criticize retroactive division of ^{Survivor} ~~service~~ benefits. H.R. 2300 was carefully drafted to avoid the unfairness likely to result from re-litigation of property settlements. Section 6(a) was intended to reach those cases where state courts have already awarded a share of survivor benefits to a divorced spouse. As I stated above, OPM does not now honor such court orders".

NOTE - Par 6(a) in the original bill is Par 4 (a) of the revised H.R. 2300.

NAUS supports the intent of Section 4 to authorize an employee or annuitant divorced prior to the effective date of the revised H.R. 2300 to provide a survivor annuity voluntarily to a divorced spouse. However Section 4 (a) (2) would permit a new court order to be issued long after the divorce was final, ordering the employee or annuitant to accept a reduced annuity to provide a survivor annuity for a divorced spouse. [Divorce settlements today are nearly all negotiated under no-fault laws and agreements reached on the basis of laws and circumstances existing at the time of the divorce. To change the rules years later and then apply them ex-post-facto to prior divorces would be fundamentally unfair and a betrayal of the federal employee by this Subcommittee. Such employees have the right to expect that divorce agreements entered into years ago are final, and that their personal financial plans made in good faith on the basis of such agreements will not be abrogated by the federal government.

I urge that Section 4 be revised to limit its application to voluntary spousal agreements and court orders issued prior to the effective date. A revised version is attached which I believe will accomplish this purpose.

Section 4 (b) (3) requires a current spouse's approval before an employee or Member can make an election to provide a former spouse a survivor annuity only if the current marriage has been in effect a year or more. Also this section could be interpreted as inapplicable to employees already retired, which I do not believe is intended. There is no apparent reason for the 1-year marriage requirement, and current spouses' interests are the same regardless of length of marriage. I recommend the 1-year requirement be deleted, and the applicability of the provision to those already retired be made clear. The attached proposed revision of Section 4 would accomplish this.

Section 4 (d) (2) contains an apparent drafting error in that it omits an essential reference to an election under subsection 4 (b) (2). As drafted, an employee or Member who has retired would not be authorized to make an election to give a former spouse a survivor annuity. The attached proposed version adds this reference and deletes the reference to a court order as recommended above.

Recommended revision of Section 4

Section 4. SURVIVOR BENEFITS IN THE CASE OF DIVORCES PRIOR TO EFFECTIVE DATE.

(a) Any current or former employee or Member in the Civil Service Retirement and Disability System who on the effective date, has a former spouse shall receive a reduced annuity and provide a survivor annuity for such former spouse if -

(1) the employee or Member so elects by means of a court approved spousal agreement, or

(2) a court order^{issued prior to the effective date}~~[under section 8341(h)]~~so provides.

(b)(1) If the employee or Member has not retired under such system on or before the effective date, an election under subsection (a)(1) may be made~~[or a court order under subsection (a)(2) may be issued]~~at any time before retirement.

(2) If the employee or Member has retired under such system on or before the effective date of this Act, an election under

subsection (a)(1) may be made ~~[or a court order under subsection (a)(2) may be issued]~~ within such period after the effective date as the Office of Personnel Management may prescribe.

(3) In any case in which ^{a current or former} ~~[an]~~ employee or Member is married ~~[and has been married for more than one year]~~, an election under subsection (a)(1) may only be made with the written concurrence of the spouse of the employee or Member.

(4) For purposes of applying subchapter III of chapter 83 of title 5, United States Code, any such election or ^{preexisting} court order shall be treated the same as if it were a court order under section 8341(h) of title 5, United States Code.

(c) An election under subsection (a)(1) may provide for a survivor benefit based on all or any portion of that part of the annuity of the employee or Member which is not designated or committed as a base for survivor benefits for a spouse or any other former spouse of the employee or Member. The employee or Member and the employee's or Member's spouse may make an election under section 8339(j)(1)(B) of title 5, United States Code, prior to the time of retirement for the purpose of allowing survivor benefits to be provided under this section.

(d) The amount of the reduction in the employee's or Member's annuity shall be determined in accordance with section 8339(b)(2) of title 5, United States Code. Such reduction shall be effective as of -

(1) the commencing date of the employee's or Member's annuity, in the case of an election under subsection (b)(1), or

(2) the effective date of this Act, in the case of ~~a~~

an election
~~court-order~~ under subsection (b)(2).

(e) In the case of an employee or Member who died before the effective date of this Act after becoming entitled to an annuity and who -

(1) at the time the employee or Member became entitled to an annuity was married and did not elect not to provide for a survivor benefit for a surviving spouse under section 8339(j)(1) of title 5, United States Code;

(2) subsequently was divorced from the spouse to whom the employee or Member was married at the time of retirement;

(3) died and was not married at the time of death (or if then married, was not married to an individual entitled to an annuity under section 8341(b) of title 5, United States Code), the individual to whom the employee or Member was married at the time the employee or Member retired shall be entitled to an annuity under section 8341 of title 5, United States Code, as if married to the employee or Member at the time of death.

(f) For purposes of this section, the terms "former spouse", "employee", "Member", and "court order" have the same meanings as when used in subchapter III of chapter 83 of title 5, United States Code.

PENSION RIGHTS CENTER

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STATEMENT
OF
KAREN FRIEDMAN, EDUCATION DIRECTOR
PENSION RIGHTS CENTER
ON
H.R. 2300 - THE CIVIL SERVICE SPOUSE RETIREMENT EQUITY ACT
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS
JUNE 20, 1984

Thank you for the chance to testify today. My name is Karen Friedman. I am Education Director of the Pension Rights Center, a public interest group whose goal is a retirement system that is fair, adequate, and responsive to the needs of individuals and the economy. I am appearing on behalf of the Women's Pension Project, an activity of the Center, set up to provide information and assistance to women who are concerned about their retirement security.

We are pleased that this Subcommittee is concerned about the economic security of spouses and former spouses of federal employees. We have heard from many of these women from all over the country who were astonished and outraged to discover that they would not be getting the civil service retirement benefits they had counted on. These women stay home with the understanding that all income earned during a marriage is shared family income, including income deferred until retirement. When a husband has spent twenty or thirty years working for the federal government, his wife, who stayed at home to make it possible for him to earn the pension, has every right to expect the pension to see her through retirement also, whether or not her husband is there with her.

H.R. 2300, as revised would enact a number of protections for homemakers. We regard this bill as an important step toward recognizing that marriage is an economic partnership.

Both the House and Senate have already passed a private pension reform measure for divorced women. The Retirement Equity Act would permit courts to award survivor's benefits to a former spouse and would clarify that a former wife may collect her court-awarded pension share directly from the plan.

1. Survivors' benefits for widows. H.R. 2300 would require a spouse's written consent before a federal retiree may give up all or part of the civil service survivor benefits in favor of a larger benefit for his own lifetime.

We find this provision a very reasonable one. It preserves the right of the wife to receive a pension she helped earn. Currently, a retiree is only required to notify a spouse if he signs away her right to survivor's benefits.

While it is important for her to be aware that she will receive no pension if her husband dies first, notification alone is not enough. Certainly it will prevent a wife from being taken by surprise after the death of her husband - the surprise that she won't be getting the survivor's annuity she counted on. But even if she knows this in advance, what can she do about it? If she has been a homemaker up to that point, there are not many options for planning retirement finances.

Both versions of the Retirement Equity Act passed by Congress contain requirements that workers under private pension plans obtain their spouses' written consent before giving up survivors' protection. I must say that this was one of the least controversial provisions of the two bills.

2. Survivors' benefits for divorced widows. The bill would permit a court to award part or all of the available survivor's benefits to a former spouse or, a couple may agree to the provision of survivor's benefits to the former spouse in a court-approved settlement.

No matter how generous a court is inclined to be in dividing civil service pension benefits, the court has no power under current federal law to award widow's benefits to a former spouse. Even in an amicable divorce, a husband cannot even voluntarily agree to provide widow's benefits. That is because federal law says that widow's benefits may only be paid to the person married to the federal worker or retiree for the year before his death.

For the first time, survivor's benefits would be available to an ex-wife. Although many divorce suits are settled out of court, we believe it is important to allow judges to order the provision of survivor benefits where necessary. Certainly, it is a logical change to accompany the present law allowing a court-ordered division of retirement benefits.

Until now, women who went through divorce involving private pension benefits faced similar roadblocks because survivor's benefits were unavailable once the marriage ended. Now, the Retirement Equity Act will permit courts to award widow's benefits to a former spouse.

Prior divorces. We strongly support the H.R. 2300 provision that permits the Office of Personnel Management to recognize court orders for survivors' benefits issued in connection with divorces before the effective date of this bill.

Many women already have divorce settlements providing widow's benefits if and when the federal law is revised. Another possible use of this provision: a former husband whose wife is eligible for an increase in alimony could offer, instead, to provide her survivor's protection through his civil service annuity.

Remarriage. Although the revised H.R. 2300 provides new protection for divorced widows, benefits still cannot be paid if a former wife remarries before the age of 60. We believe that she has earned the benefit and should continue to receive her fair share for as long as she lives. Termination upon remarriage is a characteristic feature of alimony, not an award of marital property. This arbitrary cut-off interferes with the right of a divorce court to divide up the pension in a way it views as equitable to both parties.

Remarriage does not automatically affect a former wife's receiving a share of retirement benefits. We would not think of cutting off the retiree's annuity because he happened to marry again. Once he has earned the pension, his right to receive it is unquestioned. His former wife should have the same right to survivor's benefits.

Under private pension law, plans must offer survivor's benefits payable for life. The Retirement Equity Act does not alter this requirement.

3. Retirement benefits for divorced wives. The bill will make it more likely that the "typical" court order will be sufficient to obtain payment of a pension share directly from the federal government.

There is a definite need for clarification in the law and regulations authorizing direct payment of a court-ordered pension share from the Office of Personnel Management to a former spouse. If a divorce court decides, after considering all the equities involved, that a former spouse is entitled to a pension share, then the federal government should assist her in collecting what she is owed and not set artificial obstacles in her way.

There are some additional protections for former spouses that we would like to see this Subcommittee consider.

Stronger provisions for dividing retirement and survivors' benefits. We hope this Subcommittee will look again at the provision for direct pro-rata division of pension benefits that was part of the original H.R. 2300. While it is essential that courts have the right to divide pensions at divorce, we are concerned that too many judges don't consider the pension at all. Many lawyers don't realize that a pension represents a marital asset.

Dealing with the pension as marital property is a relatively new problem for divorcing couples and the courts. Of course, some states already have well-developed law on the subject. For example, in California, a community property state, courts

routinely split pensions. South Carolina will not divide pensions, even when federal law clearly allows it.¹ When state law is clear on pension division, either through statute or case law, and courts apply that law consistently, a federal pension division law should not have any impact on state law. While the majority of states treat pensions as marital property at least some of the time, their policies are not well defined. If a state marital property statute does not mention retirement benefits, then the courts must develop a rule through case law. Even if local law permits pension division, courts must wrestle with the questions: are all pensions divisible? What about a pension that is not yet being paid, or that is not yet vested? How does the court decide how much the pension is worth? How should it be divided and paid out? We have seen that when a court cannot come to grips with these questions, the result is that the former spouse is not provided for.

Even when state law clearly treats pensions as marital property, some lawyers don't always think to bring up the pension issue. For example, though there have been recent cases, both in Maryland and the District of Columbia,² that make it clear that pensions are marital assets, our organization continues to receive calls from local women going through divorce who ask, "My lawyer hasn't said anything about asking for part of my husband's pension; what are my rights?"

In Michigan, a judge who presides over 200 divorce judgments

1. Brown v. Brown 302 S.E. 2d 860 (SC 1983)

2. Barbour v. Barbour, 464 A.2d 915 (Md. 1983); McCree v. McCree, 464 A.2d 922 (D.C. 1983) - both included civil service pensions.

a year complains: "In probably half the cases I see, the lawyers don't consider pensions in determining the total assets in marriage. I always ask if this was a consideration, and if not, I tell the lawyers to go back and consider it. The case law in Michigan is clear that all attorneys should consider pensions as part of the assets."³

Of course, we would hope that every lawyer knew all the laws relevant to his or her client, and bar associations are trying to educate lawyers about pensions at divorce. But in the meantime, divorced women are losing out. Typically, they have one chance to be awarded a pension share, and that is at the time of divorce. I can't tell you how many letters we receive from women long since divorced, who ask, "No one ever said anything about the pension when I was divorced; is it too late for me?" We usually have to tell them, yes, it is too late, because courts are generally reluctant to re-open final decrees.

That is what makes the pro-rata provision so necessary. As we understand that provision, a court is free to apply local law on pensions and a couple may negotiate whatever settlement they can. But if the pension issue is not addressed, then a former spouse would have a right to a portion of the civil service annuity and survivor's benefits.

Health insurance. We also hope this Subcommittee will consider including a provision extending federal employee health insurance coverage for former spouses. We would like to see

3. Wayne County Circuit Court Judge Marianne O. Battani, as quoted in "Pensions often leave widows out," The Detroit News, May 30, 1984

former wives allowed to remain covered by federal group health insurance at group rates, as proposed in H.R. 656, the Federal Employees' Health Benefits Reform Act, introduced by the Chair. Although former spouses now have the right to be covered after divorce by the same insurer as before the divorce, the coverage may be less and the cost much higher because she is covered as an individual. This means that health insurance premiums for an older divorced woman, especially one with chronic health problems, may cost several thousand dollars a year. She must choose between paying an exorbitant premium that increases annually or having no coverage at all.

✓ Life insurance. Finally, we ask that the Subcommittee add a provision that would permit a court to order the retiree to make a former spouse or child the irrevocable beneficiary of his Federal Employees Group Life Insurance (FEGLI). Even though the court may make such an order or a husband may have such agreement in a divorce settlement, current regulations appear to permit the husband to change the beneficiary at will:

A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted. 5 CFR 8870.901(e)

* * *

At retirement, a pension represents for most women an essential supplement to social security. But today you are looking at a benefit that may be the only retirement income for the wife or former wife of a federal employee. Most of the women who contact my office about civil service pensions are

lifetime homemakers who are not prepared to go out into the workforce for the first time and earn their own pensions. For this reason, it is essential that a wife be able to count on sharing in the civil service annuity which she helped earn, even if her husband is not there with her at retirement.

Although new federal workers are covered under social security, current workers and retirees will continue to depend on civil service. Another generation of homemakers will find that widowhood and divorce mean an impoverished old age unless the law changes. And even though future federal workers will have social security, we know that social security alone will never be enough for a decent retirement.

We urge the Members of this Subcommittee to enact H.R. 2300 as soon as possible.

Thank you for the chance to appear today.

CSSE

CIVIL SERVICE SPOUSES FOR EQUITY

(Group of 350 people)

Thank you, Madam Chairwoman.

I am happy to be here today to represent Civil Service Spouses for Equity (CSSE) as we discuss revisions to HR2300. As president of CSSE, I applaud your efforts to obtain equitable pension benefits for long-time Civil Service spouses.

I presented a lengthy testimony at your hearings on October 20, 1983 that I would like to submit as still relevant and representing the needs and desires of my group.

CSSE was organized in 1982 to achieve security for divorced spouses of Federal Civil Service employees through division of Civil Service annuity and automatic survivors' benefits. We now have members in 32 States and the District of Columbia and the District of Columbia. Our median age is 60 and over 98 percent of our group are women. Most of us have been married over 30 years; have raised families; are, for the most part, unemployable; are now divorced and experiencing or anticipating an impoverished retirement through inequities in the Civil Service law.

CSSE recognizes the great effort and care that has been directed toward revising HR2300. At the same time, we would like to make a plea for the addition of a health insurance provision in this bill. Health care continues to be a severe problem for the CSSE members and we would like to see HR2300 amended to include

CSSE TESTIMONY

protection for divorced Civil Service spouses at group rates, if the spouses pay the entire health premium.

You have our deep appreciation for providing this opportunity for CSSE to make known our concerns and desires. Thank you.